IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

AO/269/2002
with
AO/270/2002

ADI RATANSHAW COOPER AND ORS. ... Appellants

V/S

MRS.MEHERA RATANSHAW COOPER
(since deceased through heirs) ... Respondents

Mr. ASHOK TAJANE FOR SHRI.GIRISH S.GODBOLE FOR APPELLANTS.
SHRI. A.H.PALEKAR for respondents nos. 1 E & 9.

CORAM: D. G. KARNIK **J.**

DATE: December 6, 2006

P.C.:

1. Heard counsel for the parties.

2. These two appeals are filed against the two orders dated 30th November 2001 passed below the two applications, one for the appointment of receiver and another for injunction filed by the appellants – plaintiffs in old suit no. 254 of 1988 (new suit no. 830 of 1996).

3. The appellants filed a suit against the respondents for a

declaration that they had 2/5th undivided shares in the suit property and for an injunction restraining the respondents from selling, alienating or creating any third party rights therein.

4. During the pendency of the suit, by a sale dated 5th October 1989, the respondent no.2 sold the suit property to respondent no.7. The plaint was therefore amended and respondent no.7 was joined as party to the suit. The appellants thereafter took out an application under Order 40 Rule 1 of the Civil Procedure Code for appointment of a receiver. By order dated 30th November 2001 the learned Civil Judge dismissed the said application. That order is impugned by the appellants in the appeal no. 269 of 2002. The appellants also took out another application in the suit under Order 39 Rules 1 & 2 of the Civil Procedure Code for an injunction restraining the respondent no.7 from further alienating the suit property . By order dated 30th November 2001 the learned civil judge dismissed that application also. That order is challenged by the appellants in the appeal no. 270 of 2002.

5. In the order passed on the application for appointment of the court receiver the civil judge has noted that the suit property was sold to respondent no.7 the by sale deed dated 5th October 1989 and the application for appointment of receiver

was made on 10th January 1990. However the appellant did not press for hearing of the application for appointment receiver for a period of over 10 years. Therefore, the court was of the view that by lapse of time of more than 10 years and on account of the inaction of the appellants the application had become infructuous.

6. As regards the application for injunction the trial court observed that though it was filed in the court on 3rd February 1990, the appellants did not move the court for hearing of that application for well over a decade and application was not heard. The application for injunction had thus become infructuous. The inference drawn by the trial court, in my view, cannot be said to be inappropriate. In any event the interest of the appellants are protected by section 52 of the Transfer of Property Act. If the respondent no. 7 or any party to the suit deals with the suit property without the prior permission of the court the alienation would always be subject to the doctrine of lis pendence covered by section 52 of the Transfer of Property Act.

7. In the facts and circumstances of the case and also taking into consideration the fact of the appellants' own inaction in moving the court for hearing of the applications for well over a decade it cannot be said that the court erred in holding that the applications had become infructuous. It may also be

noted that even after the order of the trial court a period of more than 5 years have passed. The suit is ready for hearing and this court has already directed expeditious hearing of the suit. In the circumstances it would be appropriate not to interfere with the order passed by the trial court but direct expeditious hearing of the suit. The trial court shall hear the suit as expeditiously as possible and in any event within one year, as the suit is more than a decade old. With the above direction both the appeals are disposed of.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
Civil application no. 371 of 2002
and
Civil application no. 1043 of 2006
in
AO/269/2002
with

AO/270/2002

ADI RATANSHAW COOPER AND ORS. ... Appellants

V/S
MRS.MEHERA RATANSHAW COOPER
(since deceased through heirs) ... Respondents

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In view of the disposal of the appeal these civil applications do not survive and are disposed of.

(D.G. KARNIK J.)